

From: John Nakai
To: Microsoft ATR
Date: 1/18/02 1:13am
Subject: Microsoft Antitrust settlement comments

Wyecliff Drive
80126

10085 South
Highlands Ranch, CO
January 17, 2002

Renata B. Hesse
Antitrust Division, U.S. Department of Justice
601 D Street, NW, Suite 1200
Washington, D.C. 20530-0001

RE: Microsoft antitrust lawsuit

Dear Renee,

I believe that I recently heard on the radio that proposed settlement in the Federal government's Microsoft antitrust case (where Microsoft would donate \$1 billion in computers and Microsoft software to the nation's poorest schools) had fallen through. If this is true, I applaud the collapse of this totally inadequate settlement agreement for the following reasons.

First, here is a quote from a TheStreet.com article
<http://thestreet.netscape.com/tech/software/10004818.html> on West Virginia's new suit against Microsoft regarding the federal case.

Under that settlement, proposed last month, Microsoft would donate more than \$1 billion in software and computer equipment to the nation's poorest schools. Critics have characterized the proposal as a ploy to increase Microsoft's share of the education-software market, one of the few areas within the software sector where it still faces significant competition, namely from old-time foe Apple Computer (AAPL:Nasdaq). Proponents characterize it as a win-win situation that benefits underprivileged students.

I would like to ask the proponents of this settlement why they think Microsoft should be a winner for the monopolistic antitrust crimes they have committed. I don't think we should be rewarding individuals or corporations for criminal behavior.

Had AT&T come to such an agreement in their federal antitrust case they would not have been broken up. Instead AT&T would have been able to stay a monopoly and would have agreed to providing free long distance to the customers of all its long distance competitors for just long enough

to drive its competitors out of business. This settlement would be a windfall reward for Microsoft for criminal behavior, not a punishment.

Microsoft's lawyers had found another shrewd way to devastate the competition of their product line in the nation's schools and weaseling out of this antitrust case at the same time.

In the part of this settlement where Microsoft agrees to donate a billion dollars worth of computers to the nation's schools, if Microsoft is allowed to make this donation using computers running Microsoft operating systems, or running Microsoft software, then it succeeds in the following.

1. Microsoft displaces other vendor's hardware and software out of the schools. A prime target here is Apple Computer, who maintains a large market share of computers in schools because of their superior ease of use and graphics capabilities. Microsoft will also displace other operating systems such as Unix, Solaris, and Linux, and other application software such as Netscape, Corel, Applixware, Appleworks, Apache, etc. from the schools. As good as the other products are, they can't compete with free hardware and software. It may well put some of these competitors out of business by flooding the schools with free Microsoft products or computers dependent on Microsoft software to operate.
2. Microsoft will force schools to have to buy software from Microsoft for future upgrades.
3. Microsoft will make children come home to their parents saying they need Microsoft software and computers running Microsoft operating systems and software to do their homework.
4. They will make themselves look like the good guys to schools, administrators, and children who will think Microsoft is coming bearing gifts, rather than buying themselves out of a criminal prosecution. A true public relations victory for the wolf in sheep's clothing.
5. Microsoft does not have to make reparations to the victims of its criminal antitrust crimes and does not get broken up. Instead, Microsoft gets to further steal market share and customer base from its competitor victims with money that should rightfully be paid to its victims or the government as a fine.
6. While Microsoft can say it donated \$1 billion dollars worth of hardware and software, let's realize that Microsoft can produce software at pennies on the dollar of retail value, and can surely acquire new and refurbished hardware from PC vendors for pennies on the dollar through any number of sweetheart deals. The true cost to Microsoft of this settlement would probably be less than a third of the advertised \$1

billion value.

As a current user of Windows, Macintosh, Unix, and Linux, plus many others in the past, I can say with expert confidence that while Windows is an acceptable operating system, it still lacks the system stability, virus resistance, advanced features, open source software, and user empowerment of creativity offered by the other operating systems. This settlement could wield a death blow to Apple and possibly others by robbing their customer base. It not only keeps the abusive Microsoft monopoly intact, it strengthens it, leaving the computer consumer world stiffly under Microsoft's thumb.

Microsoft truly needs to be broken at least into two separate companies to separate their operating system business from its application software business. The current structure gives Microsoft continuing opportunity to sabotage competing application software with incompatibility changes to its operating system with each OS revision, and to provide other operating systems with slow, buggy, or otherwise dysfunctional or nonexistent versions of its application software. Its further expansion into internet services with msn.com, and its plans to deny msn.com web service to browsers other than its own Internet Explorer because other vendor's browsers are incompatible are further examples of Microsoft's plans to cut out competing vendor's products through the use of its monopoly powers.

My opinion is:

1. Microsoft should still be broken up.
2. Microsoft should not be allowed to flood schools with free computers and software unless the computers are up-to-date Macintosh, Linux, Solaris, Unix, or other non-Windows computers. Any freely provided software should be that of current competitor software (AOL, Netscape, Kodak, FileMaker, Apple, Red Hat, Yellow Dog, ApplixWare, gnu, Sun, etc.) Only then will this settlement make any kind of reparation to Microsoft's victims and aid in discouraging and diminishing Microsoft's monopolistic abuse.
3. Microsoft should not be able to provide free internet service to schools as a part of any revised settlement, as msn provides good service and up-to-date software only for Windows based computers.
4. If Intel or other PC clone based computers are provided to schools for free as a part of this settlement Microsoft should be required to bar these computers from being activated with Windows XP or other versions of Windows for a period of at least 5 years. This is technically doable at least for XP, as activation of XP requires users to call Microsoft and provide the computer's unique machine ID for activation.

5. An alternative would be to require Microsoft to first pay victim competitors (if they are still in business) directly for damages, and use the remaining funds as described in 2 to 4 above.

I hope that you will reconsider separating Microsoft's operating system, application software, and internet operations into three separate companies to promote fair competition for the benefit of all of us, and totally drop plans of this incredible competition devastating free giveaway of computers to schools unless they conform to restrictions like I mentioned in 2 to 5 above.

Thank you for your time in reading this,

John Nakai